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United States Senate

COMMITTEE ON HEALTH, EDUCATION,
LABOR, AND PENSIONS

WASHINGTON, DC 20510-6300

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May 13, 2013

The Honorable Kathleen Sebelius
Secretary
U.S. Department of Health and Human Services
330 Independence Avenue, SW
Washington, DC 20201

Dear Madam Secretary:

I am writing to request information about your apparent attempts to avoid the constitutional limits on the Department of Health and Human Services' appropriations by fundraising for, and coordinating with, the private non-profit Enroll America. These actions are inconsistent with federal separation of powers principles and may violate federal appropriations laws.

It has been widely reported in the media that you asked the private sector to make large financial donations to Enroll America, a nonprofit organization run by a former White House aide, to support implementation of the Patient Protection and Affordable Care Act, and may have raised money for other outside organizations for the same purpose. According to at least one report, you made these appeals both by telephone and in speeches.

The Appropriations Clause is arguably the single most important curb in the Constitution on executive branch power. Article I of the Constitution gives Congress alone the power of the purse. This means a federal agency is dependent on Congress for its funding, and it is up to Congress to make important policy choices about whether or not to provide funds for a particular program and to fix that level of funding or set terms and conditions on its use.

The Antideficiency Act enforces these principles and generally prohibits entering into contracts or obligations or accepting voluntary services for the United States in excess of available appropriations. Depending on the relationship between HHS and Enroll America, the level of control exercised by your agency over the organization, and the nature of the activities in which Enroll America is engaged, HHS may be creating obligations or accepting services in violation of the Antideficiency Act.

It also appears that your actions may be in violation of the "rule against augmentation of appropriations," which is meant to "prevent a government agency from undercutting the congressional power of the purse by circuitously exceeding the amount Congress has appropriated for that activity." GAO-06-382SP Appropriations Law Vol. II, page 6-162. This

includes a prohibition on certain voluntary services in 31 U.S.C. §1342 and the restriction of the use of appropriated funds to their intended purposes in 31 U.S.C. §1301(a).

In public statements, your spokesman has claimed that the Public Health Service Act (PHSA) authorizes you to engage in fundraising to support these efforts. However, the possibly relevant sections of the PHSA, 42 U.S.C. §§300u-1, 2, or 3, only provide —and in a parenthetical, at that — for you to “encourage others to support” efforts in health information and health promotion, preventive health services, and education in the appropriate use of health care. Fundraising in your official capacity as Secretary for a specific organization that exists to promote the President’s health care law and is controlled significantly by entities that have a vested interest in the law’s implementation is a far cry from what Congress intended.

Accordingly, in order to assess the propriety of HHS’s activities, please provide the following information:

- 1) A description of the degree to which HHS and Enroll America (or any other outside entities) are coordinating efforts on the implementation of the Patient Protection and Affordable Care Act.
- 2) Copies of correspondence and the number of meetings (including date and time) as well as a description (or copy where available) of any written or oral agreements between or among HHS, Enroll America or other outside entities assisting HHS in implementing the Affordable Care Act.
- 3) A list of each time HHS has relied on the provisions of the Public Health Service Act to solicit donations for specific outside private entities, the amounts solicited, and the scope of coordination with that outside entity, if any.
- 4) A list of amounts and specific accounts for all transfers made to fund implementation of the Affordable Care Act at HHS since March 23, 2010, and whether any funds have been received from other government agencies or donated to assist HHS implementation.
- 5) A list of all HHS personnel who have been involved with fundraising for outside entities in order to support Affordable Care Act implementation, including but not limited to soliciting donations on behalf of Enroll America.
- 6) A list of all individuals (and their affiliations) that you or your subordinates contacted or addressed in order to fund Enroll America (or any other outside entity).

Thank you for your attention to this matter. If you have any questions, please have your staff contact my General Counsel, Michael Merrell, at (202) 224-6770.

Sincerely,



Lamar Alexander